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MISSOULA, MT

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PATRICK E. DUFFY

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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

GREG NESSELRODE,	)	CV 06-150-M-DWM
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
FLATHEAD COUNTY, and	)	
JOHN DOE DEFENDANTS I-III,	)	
	)	
Defendants.	)	
	)	

United States Magistrate Judge Jeremiah C. Lynch entered Findings and Recommendation in this matter on September 28, 2006. Plaintiff timely objected on October 3, 2006. Plaintiff therefore is entitled to de novo review of the record. 28 U.S.C. § 636(b)(1).

Plaintiff filed a complaint alleging Flathead County law enforcement officers violated his constitutional rights by facilitating Plaintiff's sale of alcohol to a minor. Plaintiff was issued a citation as a result of the incident. See Mont. Code Ann. § 16-3-301 (prohibiting the sale of alcohol to persons

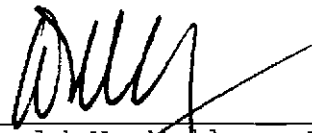
under twenty-one years of age). Judge Lynch recommended dismissing Plaintiff's complaint without prejudice pursuant to the Younger abstention doctrine. See Younger v. Harris, 401 U.S. 37 (1971). Judge Lynch determined Plaintiff's federal suit would interfere with ongoing state proceedings because Plaintiff was scheduled to appear in Justice Court on the citation on September 29, 2006. Judge Lynch further determined any relief granted in federal court would have the practical effect of enjoining the state Justice Court proceedings.

In his objections, Plaintiff asserts he was found guilty of selling alcohol to a minor, presumably in an effort to persuade this Court that Younger abstention no longer applies. In support of his assertion that he was found guilty, Plaintiff points to a September 25, 2006 letter from Detective Travis Brayer to the owner of the store where Plaintiff worked. The letter indicates Plaintiff was cited for selling alcohol to a person under twenty-one years of age. The letter, however, does not indicate Plaintiff has been found guilty of the charge; it only informs the owner of the citation. In fact, Plaintiff attached a "Case Information and Status Record" to his objections, which indicates he pled not guilty at his arraignment on September 29, 2006. This document further indicates Plaintiff was released on his own recognizance pending further court proceedings. Because the state Justice Court proceeding remains ongoing, Younger

abstention is still appropriate for the reasons set forth in Judge Lynch's Findings and Recommendation.

Accordingly, IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation are adopted in full. Plaintiff's Complaint is DISMISSED WITHOUT PREJUDICE.

Dated this 1<sup>st</sup> day of November, 2006.

  
\_\_\_\_\_  
Donald W. Molloy, Chief Judge  
United States District Court

